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Welcome to the 2017 Edition

Welcome to the ninth edition of Barbados International Finance & Business.

Since the 17th century, Barbados has played an important role in international trade. This tradition continues today, as Barbados seeks to consolidate its position as a leading international financial centre (IFC). This treaty-based domicile, offering transparency and strict adherence to Organisation for Economic Co-operation and Development standards on compliance, is constantly working towards increasing its share of the international business market, whilst expanding its network of tax treaties – currently 37 and growing.

During 2016, Barbados continued to refine and improve its product offering. The jurisdiction is the IFC of choice for a number of reasons, including its strong regulatory framework, an English Common Law legal system, political stability, geographic proximity to North and Latin America, availability of a well-educated and skilled workforce, and a wide choice of service providers, including international banks and international chartered accounting firms.

Barbados currently has approximately 4,000 entities licensed in the industry, making a 10% contribution to our national economy. Since the modern era of IFCs, Barbados has redefined itself towards financial services and remains the domicile of choice for Canadian-parented companies and, increasingly, the choice for Latin American investors.

I welcome you on behalf of the Government of Barbados to consider the competitive advantage Barbados will deliver to your organisation.

With very best wishes,
James Gardiner
Welcome to the 2017 edition of the Barbados International Finance & Business magazine, being published at a time when our country has recently marked a significant milestone – 50 years of nationhood.

As we reflect on Barbados’ progress post-independence, there are many developments of which we can be justly proud. However, we know that we must keep working harder for our country to remain a compelling and attractive choice for investors in an ever changing, increasingly competitive global business environment. Barbados’ success to date as an international financial centre (IFC) may be attributed to several factors including a commitment to transparency, encouragement of business of substance and adherence to standards of international best practice. Just as important, has been the Government’s people-centred approach, in recognising that our human capital is the country’s most valuable resource.

The ongoing investment in its citizens by successive Barbados governments has resulted in the creation of a critical mass of skilled professionals and service providers who, together with public sector stakeholders, continue to drive the development and growth of the country’s international business and financial services (IB&FS) sector. This collaborative approach has been a key factor in Barbados’ successful navigation of the many challenges confronting IFCs over the years, such as the growing demands for exchange of tax information, issues related to the USA’s Foreign Account Tax Compliance Act and the base erosion and profit shifting initiative, among others.

Barbados remains committed to the expansion of its bilateral treaty network, the foundation upon which the IB&FS sector has been built. With 37 double taxation agreements (DTAs) in force, five tax information exchange agreements and nine bilateral investment treaties, the country continues to identify other opportunities for the conclusion of such treaties. Barbados is a signatory to the Organisation for Economic Co-operation and Development’s (OECD’s) Multilateral Convention on Mutual Administrative Assistance in Tax Matters. Just recently, the jurisdiction was upgraded to “largely compliant” by the OECD and continues to implement the necessary administrative and legislative changes to ensure full compliance.

During the past year, a Barbados/United Arab Emirates DTA entered into force, a Barbados/Slovak Republic DTA was signed and the International Securities Market on the Barbados Stock Exchange was launched. Additionally, the Foundations legislation was proclaimed and the Incorporated Cell Companies Act was introduced to further enhance the range of wealth management options available to the international insurance industry. The Corporate and Trust Services Providers Act came into effect and there was further progress towards the establishment of a regional arbitration centre in Barbados.

Notwithstanding, fresh challenges continue to emerge. Currently, Barbados, like other Caribbean countries, is grappling with the global issue of de-risking by international banks and its negative impact on the international business sector. The Government of Barbados is giving its full attention to this serious matter, which threatens to reverse many of the gains that our country has realised over the years. Invest Barbados, along with a number of other government agencies, will continue to work even more closely with stakeholders to address, and seek to remove expeditiously, any other impediments to the smooth conduct of business in Barbados.

As the global economic and political landscape continues to evolve, the future may appear ever more uncertain. Never before has there been a greater imperative for us, as a nation, to build on that spirit of resilience that has brought us thus far, to adapt to the changing global environment, to move forward together, united in our goal to position Barbados as the wealth management centre of choice in the Western Hemisphere. Together we must work to ensure that Barbados remains an inviting and welcoming domicile, conducive to the growth and development of business for many more years to come.

Senator The Hon. Darcy Boyce
Minister in the Office of the Prime Minister
It has become evident that, as the global economy continues to expand exponentially, greater opportunities are presented for the use of the international business corporation (IBC).

Barbados: an Obvious Choice for Legal Outsourcing

... Barbados' greatest asset is its highly educated workforce. The island has a first-class education system that produces top quality university graduates every year. We draw upon this intellectual capital to provide highly competitive ...

The Bitcoin blockchain represents the world's most secure, immutable and distributed database, and the applications of this technology are as far reaching as those of the internet itself.
As we welcome 2017, and as with each new year, there is a sense of hope and expectation, a renewed drive to succeed, coupled with recharged energies. The Invest Barbados team has a positive outlook for our international business and financial services (IB&FS) sector.

During the past year the IB&FS sector has seen a number of developments at the domestic level, and more so, on the global front, including the restoration of diplomatic relations between the USA and Cuba, BREXIT and the US Presidential election. These geo-political changes will undoubtedly impact the IB&FS landscape and will present new opportunities for Barbados.

In view of the prevailing fragile global economy, the role of the Investment Promotion Agency (IPA) is even more pivotal. Traditionally, IPAs have been established by governments to attract foreign direct investment (FDI) and spur growth in specific sectors. Notably, the priorities of IPAs have evolved in response to economic imperatives and market conditions.

From inception, Invest Barbados (IB) has embraced these key roles. IB has responsibility for attracting FDI and international business that create jobs, generate taxes and earn foreign exchange revenue, and ensuring that prospective investors have the information required to make informed business decisions. Together with stakeholders, IB has been carefully building and managing the country’s international business brand, while positioning Barbados as the wealth management jurisdiction of choice in the Western Hemisphere. IB also continues to be a policy advocate, channelling concerns and new ideas to the appropriate authorities, while supporting initiatives to improve the domestic investment climate.

Similar to other small open economies, Barbados’ economic development is inextricably linked to the country’s ability to attract and sustain international business. While significant progress in this regard has been achieved over the years, increasing competition from onshore IPAs compounded by a more volatile, global business environment, now requires greater vigilance and adaptability on the part of offshore IPAs in order to enable their economies to expand and flourish. The 2016 World Investment Report observed that “promoting and facilitating investment is crucial for the post-2015 development agenda.”

IB, now in its 10th year of operation, has consistently collaborated with industry stakeholders to facilitate both established and new investors doing international business in Barbados. This productive partnership will become increasingly critical in an environment that is progressively challenging and competitive. Both public and private sector entities will need a closer working relationship that prioritises business facilitation and an attractive, supportive business environment.

As IB embarks on its second decade of operation, we will maintain the ethos and values of good governance and efficiency which have characterised our success. A thriving Barbados is our aim. Our focus will be on facilitating mutually beneficial projects that will contribute to sustainable human, social, environmental and economic progress. We will also purposefully continue our advocacy for excellence in business facilitation and customer care, while ensuring that strategic investment promotion remains our top priority. As our mandate requires, we will seek to win additional international business in areas including niche manufacturing, ICT, wealth management, financial services, medical tourism and offshore universities. Marketing efforts will continue in Latin and North America as well as in Europe. We will engage traditional and newer communication channels, including the use of social media platforms. Together with our stakeholders we will nurture a more prosperous Barbados.

We trust that you will find the articles in this ninth edition of the Barbados International Finance & Business magazine both meaningful and stimulating. They are intended to showcase aspects of the Barbados value proposition and demonstrate why Barbados continues to be a leading jurisdiction of choice for investors. Do contact us, and let’s explore how choosing Barbados can enhance your global competitiveness.

Sandra Payne
Chief Executive Officer (Ag)
In order to encourage the growth of international trade and commerce, and to provide a measure of certainty regarding the interpretation and application of tax laws and regulations, successive Barbados governments have sought to conclude double taxation agreements (DTAs) with important trading partners, including emerging countries. This policy is expected to continue into the future.

The issues surrounding tax are dynamic and increasingly evolving, and are becoming more and more complex, both locally and globally. One of the fundamental tenets of DTAs is that they seek to eliminate the double taxation of income arising in one jurisdiction and paid to another.

Double taxation
There are two kinds of double taxation:

- juridical double taxation (most commonly seen in the international arena); and
- economic double taxation.

The Organisation for Economic Co-operation and Development (OECD) defines “international juridical double taxation”, in general terms, as the imposition of comparable taxes in two or more states on the same taxpayer in respect of the same subject matter and for identical periods. For example, in determining the right to tax worldwide income, overlapping criteria, like the place of incorporation and the place of management, are used to determine the dual residence of a company and the taxing rights of worldwide income in each jurisdiction.

The International Bureau of Fiscal Documentation defines “economic double taxation” as the imposition of comparable taxes by two or more tax jurisdictions on different taxpayers in respect of the same taxable income. For example, corporate profits being taxed at the corporate and the shareholder level. At the international level, consider transfer pricing and the increase in profits attributed to one jurisdiction, without the corresponding reduction in profits applied in the other.

Double taxation may be imposed at:

- a domestic level - by different taxing authorities, and
- an international level - by sovereign states.
Double taxation relief

Double taxation has a number of harmful effects, which include having a negative impact on the exchange of goods and services and on the movement of capital, technology and persons.

Some forms of double taxation relief are granted through:
- exemption method
- foreign tax credit method; or
- deduction method.

Dispute resolution

Where double taxation is not avoided by way of the methods noted above, the competent authorities may resolve the issue by way of mutual agreement procedure or arbitration.

Exchange of information

Another fundamental principle incorporated into DTAs relates to a country’s right to obtain information on a taxpayer, in order to adequately protect its tax interests. Many of Barbados’ treaties include, or are in the process of being amended to include, a relevant article pertaining to the exchange of information to meet OECD requirements.

Barbados has been proactive since its independence in 1966, having DTAs in force with 37 countries (and another nine currently awaiting ratification or signature), 11 signed bilateral investment treaties and a number of tax information exchange agreements and conventions, as shown below. These bilateral and multilateral agreements facilitate both the elimination of double taxation, the protection of investments, and the mutual exchange of information. The Government of Barbados will continue to pursue a policy of identifying new countries which hold opportunities for the expansion of international business, trade and investment, in order to expand its treaty network, so as to better facilitate that expansion.

Regions with Treaty Agreements

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<td>South Africa, Faroe Islands, Denmark, Greenland, USA, Colombia (AR), France (AS), Germany (AS)</td>
<td>The Multilateral Convention on Mutual Assistance in Tax Matters was signed on 28 October, 2015 and entered into force on 01 November, 2016.</td>
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<td>The Foreign Account Tax Compliance Act entered into force on 23 September, 2015.</td>
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<tr>
<td>Latin America</td>
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<td>Mexico, Panama, Venezuela</td>
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INTERNATIONALLY RESPECTED.
The infamous Pablo Escobar, pop legend Shakira and the ubiquitous Juan Valdez coffee brand have one thing in common - The Republic of Colombia, located at the northern tip of South America. But a visit to Colombia will reveal that it is much more than the birthplace of these internationally renowned personalities. Colombia is not only a fascinating country rich in the arts, history, culture, stunning architecture, mesmerising landscapes and lush rainforests, but it also boasts a thriving business sector.

Agribusiness, manufacturing, commercial and IT services, which includes building materials, cosmetics and toiletries, private equity funds, energy, including oil and gas, and goods and services, comprise the principal segments of the business sector.

Barbados, with its broad range of investment offerings, is well positioned to grow and preserve the wealth generated by families and businesses in Colombia, particularly through its wealth structuring and investment vehicles; for example, through a trust, foundation or an international business community – qualities that flow through their Colombia and Mexico remain at the top of Barbados’ list of Latin American investors’ planning opportunities.

Indeed, Barbados has been attracting Colombian-owned and operated businesses since the 1980s, specifically in the banking and insurance sector. One of Colombia’s largest global tuition insurance companies is based in Barbados, and this company has contributed significantly towards the advancement of education, not just in Colombia, but also in Barbados. Colombians are generally philanthropic, loyal and intelligent people, and these are qualities in common with the Barbadian international business community, qualities that flow through their mutual business dealings.

The Government of Barbados has mounted a number of missions to Colombia within the last 18 months, resulting in the introduction of direct air traffic between the two countries, among other positive developments in progress. The Barbados private sector has also visited Colombia on several occasions, acquainting Colombians with the products Barbados can offer, and showcasing the high calibre of trusted professionals on the island who can work with Colombian investors and their advisors to accomplish their investment planning goals.

While many Latin American countries routinely blacklist Caribbean international financial centres, Barbados was removed from Colombia’s blacklist in October 2014, and a month later concluded a tax information exchange agreement (TIEA) with Colombia. This was a significant first step for both countries, towards the negotiation of a double taxation agreement (DTA). Generally, the TIEA provides for exchange of information in relation to the administration and enforcement of domestic tax laws on the contracting parties. On the other hand, a DTA seeks to eliminate the double taxation of income or gains arising in one contracting state and paid to residents of another state, or in some instances, to ensure that the tax rights each country claims by its domestic laws, over the same income and gains, is apportioned between those states.

When the DTA between the two countries is completed, it will provide even more benefits to Colombians seeking to establish business roots in Barbados and vice versa, but, in the interim, the TIEA with Colombia does provide the parties with comfort in the stability of relations and cooperation between the two jurisdictions. Thus, the substance and the impact of the TIEA should not be discounted in the context of Barbados/Colombia structures.

The many myths around transacting business in Colombia and with Colombians, have been thoroughly debunked in modern times. The country’s reporting and compliance environment is beyond reproach, and their standards are markedly higher than many of their counterparts in Latin America. The growing relationship between Colombia and Barbados has proven to be a positive development for international clientele wishing to do business in Colombia.
Barbados, without doubt, is the jurisdiction of choice for those seeking substance, where local directors are required to play an active role in the management of the business and affairs of a company. Our relevant jurisprudence, strong standards of practice and regulatory system are qualities that speak to an image of transparency and substance. The imminent implementation of the Organisation for Economic Co-operation and Development-led Base Erosion and Profit Shifting Action Plan will push international investors and tax planners to seek out jurisdictions with those attributes, like Barbados. For local directors therefore, protecting and upholding this image is paramount.

Unlike other international financial centres, where directors can be appointed as nominees to play a largely symbolic role, the standard of practice and the regulatory system in Barbados requires directors to take a much more active role. The Companies Act (the Act), Barbados Stock Exchange Corporate Governance Recommendations, Guideline on Corporate Governance issued by the Financial Services Commission, Corporate Governance Guidelines issued by the Central Bank of Barbados and practice of the Barbados Revenue Authority (BRA), all attest to this fact.

For example, the Act imposes a duty on directors to manage the company directly, or indirectly, through its agents and employees, and to direct the management of the business and affairs of the company. Additionally, it provides that when directors are exercising their powers and discharging their duties, they must exercise the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances. A director has a fiduciary duty and responsibility to act in the best interests of the company, and it is essential that non-executive directors seek to learn as much as possible about the business of the company in order for them to effectively perform their duties.

Another major consideration to be taken into account as a director, is the fact that the BRA has adopted the United Kingdom common law test of corporate residence, which focuses on the place where the ‘central management and control’ of a company is exercised. The concept of central management and control is directed at the highest level of control of the business and looks at the place where the strategic management of the entity occurs.

The level of discussion undertaken at board meetings and the involvement of directors in the decision-making process, are of critical importance when determining the tax residence of a company. To establish residence in Barbados, directors cannot engage in mere rubber-stamping of decisions made by others; neither can they sign documents or approve transactions without giving due consideration to all the pertinent issues.

In Laerstate BV v HMRC [2009] UKFTT 209 (TC), the tribunal referred to the Special Commissioners’ finding in Wood v Holden at [145]: “We do not consider that the mere physical acts of signing resolutions or documents suffice for actual management….What is needed is an effective decision as to whether or not the resolution should be passed and the documents signed or executed and such decisions require some minimum level of information. The decisions must at least to some extent be informed decisions. Merely going through the motions of passing or making resolutions and signing documents does not suffice.”

While there is nothing wrong with a majority shareholder indicating to the directors of a company how that shareholder would wish them to act, the Laerstate case reinforces the importance of directors being provided with as much information as is required to allow them to make a fully informed decision, and that any such decisions be discussed, approved, and officially documented at the board meetings. If they consider the wishes of the shareholders and act on them, once they are fully informed, it is still their decision. Therefore, directors should avoid, at all costs, signing documents without seeking and securing adequate background information.

The role of a director is, without question, extremely important and requires an individual to have a broad understanding of the operations of the company. This is so that, collectively, the board can effectively make strategic decisions and monitor the way in which management operates the company’s business. This role is taken very seriously by regulators in Barbados and local directors understand the importance of their work in terms of ensuring that Barbados remains the jurisdiction of choice for those seeking substance.
More than a tax thing

The OECD BEPS project is affecting almost every element of a global business model:
the value chain – all phases from business planning to after-sales product service will have to be reevaluated
through the lens of the newly established coherence and substance standards; the increased transparency standards
will require more comprehensive reporting, meaning companies must provide more information about their global
operations than ever before and will have an increased compliance burden. The new rules (as applied by countries)
will likely influence how people are organized, where they work and the duties and processes they perform.
Ultimately, the BEPS project weighs on everything from intangible ownership and management to the global
legal entity structure. Be prepared for shifts to your business model, when the pathway forward is clear.

People, organization, location
In the BEPS era, tax authorities in jurisdictions all over the world will gain greater
access to information about an organization’s global process, capital, human
resources, cash flow and taxation data. This increase in information at the tax
authorities will lead to further inquiries and information requests and will likely
rise to increased controversy.

Activities, processes and ways of working
A core goal of the BEPS project is to identify tax earnings that are currently untaxed. The OECD has provided detailed
recommendations for law changes and information sharing. With this, tax authorities will be reviewing the full spectrum
of activities across any company’s value chain. MNEs need to revisit their operating model using a BEPS project lens;
considering law changes and making adjustments where needed and when appropriate.

Rethinking the value chain
BEPS recommendations are to significantly lower the thresholds for triggering a taxable presence
in a host country. As such, companies will be forced to take a critical look at their entire
value chain. The presence of, for instance, any of the following elements can give rise to a
taxable presence.

- Plan/design
  - Centralized planning
  - Centralized design and development

- Buy
  - Procurement office
  - Procurement agent

- Make
  - Toll manufacturing
  - Access to inventory
  - Contract manufacturing
  - Full-risk local manufacturing
More than a tax thing will require more comprehensive reporting, meaning companies must provide more information about their global legal entity structure. Be prepared for shifts to your business model, when the pathway forward is clear.

BEPS and business value chain. The presence of elements can give rise to a taxable presence. The OECD has provided detailed information that will be exchanged with other tax authorities where the presence are currently untaxed. The adoption of the BEPS recommendations places an array of new demands on multinational enterprises’ IT departments. In general, IT systems will need to facilitate more information than ever before at a remarkably granular level.

Operating model, transfer pricing and legal entity structure

The operating model of any MNE can be described as a collection of global and local decisions regarding people, operations and decision-making processes across borders, channels and entities based on business needs. Since local country reactions to the OECD BEPS project may alter the tax treatment of existing local and cross-border activities, companies may need to make minor or even major adjustments.

Suppliers

Suppliers may come under pressure from the new BEPS rules in terms of added complexity and costs, which they may look to share with the MNE.

Hubs / sales entities

Organizations will need to confirm that functions carried out by their hubs and sales entities are aligned with the contractual arrangements in order to avoid raising concerns with tax authorities.

Governance

In light of the OECD BEPS project, multinational organizations are taking a closer look at their governance structures. Creating a global standard set of processes, procedures and data requirements could help businesses improve the governance of cross-border activities and reduce risk.

IT systems and reporting requirements

The adoption of the BEPS recommendations places an array of new demands on multinational enterprises’ IT departments. In general, IT systems will need to facilitate more information than ever before at a remarkably granular level.

Master data management

Companies have new compliance requirements. MNEs are required to maintain a “local file” and master file and to prepare a CbC report for each country of operation. These files must include extensive reporting from legal structure to individual product/service profitability, intangibles and intercompany financial activities.

Business intelligence (BI) and reporting

New documentation and reporting requirements in combination with automatic international information sharing will allow tax authorities to perform detailed analysis of an MNE’s operations. Appropriate tax policies and consistent application of these policies will be key to minimizing controversy. IT will need to supply BI teams with the data necessary to continuously monitor and test performance against consistency.

Supply chain

Having sufficient and accurate governance controls in place, including comprehensive information on warehousing locations and access to inventory records, would help defend an organization’s position in potential disputes with tax authorities.

Intangibles

Governance structures must be in place to help identify activities involving the development, enhancement, maintenance, protection and exploitation (DEMPE) of intangibles and the control over those activities.

People

In light of the OECD BEPS project, multinational organizations are taking a closer look at their governance structures. Creating a global standard set of processes, procedures and data requirements could help businesses improve the governance of cross-border activities and reduce risk.
A brief BEPS project glossary

- Arm’s length: The price an unrelated third party would expect to be paid – or pay – in exchange for a good or service.
- Controlled foreign company: A CFC is any company where the parent owns a controlling interest. Companies may shift income from activities in high-tax jurisdictions into a CFC in a low-tax jurisdiction as a means of tax avoidance. BEPS seeks to limit this activity.
- Country-by-country reporting: BEPS requires multinational enterprises MNEs to develop a detailed “local file” for all countries where they operate. CbC must include a range of key indicators, including numbers of employees, activities performed and local expenditures.
- Nexus: BEPS seeks to distinguish between business models/structures that are tax-driven and those that contribute economic value. A nexus approach uses factors such as the qualifications of employees to determine the true substance of an MNE’s activities and hence the value being created in any given jurisdiction, with profits allocated accordingly.
- Patent box: A set of tax and related incentives designed to incentivize MNEs to choose a jurisdiction for ownership of key intangibles such as patents and similar intellectual property assets. BEPS looks at the actual activities being performed to determine which jurisdictions are entitled to tax which income (see Nexus).
- Permanent establishment: A host country that determines that an MNE has a substantial economic presence, a so-called permanent establishment (PE), can now lay claim to a portion of the MNE’s profits. BEPS lowers the thresholds for determining if a business maintains a PE.
- Transfer pricing: The agreed value of any good or service exchanged between related affiliates across borders. By raising or lowering this price, a parent company can shift profits between affiliates, favoring lower tax jurisdictions. BEPS adjusts current transfer pricing practices to focus more on key people and their value creating activities and less on the legal entity bearing the risks and capital.
- Treaty shopping: MNEs can use subsidiaries to move profits between jurisdictions. Such subsidiaries are often located in nations with low tax rates. The nexus, CFC and related rules are intended to prevent or limit tax benefits stemming from such “shell”, “cash box” or “letterbox” affiliates.

* The definitions and descriptions above are presented solely as summarizations/generalizations. Many additional considerations not mentioned will apply.
Finding Just the Right Person for Your Organisation

Peter Downes of Profiles Caribbean Inc., offers some valuable tips on staff recruitment:

Every organisation requires a unique blend of skills and attitudes from its employees. Finding the right individuals through a proper recruitment and selection process is therefore critical in defining your competitive identity, as bad hiring decisions can have far-reaching implications. Here is a useful process to consider when taking on staff:

1. Understand what you are recruiting for
Have a good understanding of the job and its requirements. A comprehensive job description and competency profile are necessary.

2. Select a recruitment approach
Advertising in the print media is costly, time consuming and potentially ineffective. Why not consider an efficient, effective and targeted alternative, such as a search firm with a database and extensive local network?

3. Conduct winning interviews
Evaluate the applications, short list and develop interview questions based around the defined key elements of the job. Conduct your interview(s).

4. Conduct background checks
Most employment legislation makes it difficult and costly to terminate employees. Check out credible references, educational credentials, past employers and, where necessary, credit, driving and criminal histories.

5. Assess applicants for job match
You have completed two of the three dimensions of a hiring decision - the past (CV, background, etc.) and the present (the interview). To complete the process, add the future - the applicant’s likelihood of success considering the uniqueness of the role, management styles and corporate cultures. Everyone is different but our individual behaviours are largely predictable. Using a reliable and valid psychometric assessment, you can, with a high degree of accuracy, predict the fit and probable future success of a candidate.
Amongst the various vehicles utilised for investment purposes in Barbados, is the Barbados Shipping Company. The Barbados Maritime Ships’ Registry confidently offers the discerning ship operator a first-class personal service in all aspects of ship registration. White-listed in the Paris MOU, and accredited to ISO9001, the Barbados Ships’ Registry provides a quality-driven service, second to none.

Ship owners and companies offering financing in the shipping industry can take comfort in the security of their investment, whether as a mortgagor or mortgagee.

The following are some frequently asked technical questions in relation to Barbados ship mortgages, and their corresponding answers:

**Q:** Does the legal system prescribe a set form of mortgage?
**A:** The Barbados Shipping Act prescribes the form to be used for the registration of a mortgage and this is issued by the Barbados Maritime and Ships’ Registry. In addition, the Registrar shall issue instructions, as he/she deems necessary, for the execution and attestation of power, and evidence required for identifying persons, among other matters.

**Q:** Does the legal system lay down any specific requirements as to the content of mortgages, to ensure their validity or their priority?
**A:** The Barbados Shipping Act prescribes that a registered ship, or a share in a registered ship, may be used as security for a loan or other valuable consideration, once filed in the registry in the prescribed form. The mortgages are recorded in order of the time in which they were produced to the Registrar for that purpose. Where a ship has been previously registered in a foreign country, and mortgages were registered against that ship, then, at the time of its registration as a Barbados ship, the written consent of the prior mortgagees is produced. On the production of the prescribed instruments, those mortgages shall be recorded in the order of priority as was indicated in the previous register.

Special provisions apply to the registration of a mortgage against bareboat-chartered ships registered under the law of a foreign country and/or as a Barbados ship. Where there is more than one mortgage relating to the same ship, the mortgages are, notwithstanding anything expressed, implied or by constructive notice, entitled to priority between each other, according to the date and time at which each mortgage was recorded in the register, and not according to the date on the mortgages.

**Q:** Does the legal system provide mortgagees with the rights which they would normally expect, i.e., the right to take possession of, and sell, the vessel on default (a) by law and/or (b) only if included expressly in the mortgage?
**A:** The Shipping Act specifies that a registered mortgagee has, under the law, the absolute power to dispose of the ship or a share to which the registered mortgage relates, and to give effectual receipts for the purchase money. Where there is more than one mortgagee of the same ship, the mortgagee exercising a power of sale cannot sell that ship or share without the concurrence of every prior mortgagee whose mortgage is earlier in time than his, except by an order of the court of competent jurisdiction.

**Q:** Are there any limits on the right of the mortgagee on default to (a) take possession of the vessel; (b) sell the vessel at auction; and (c) sell the vessel privately?
**A:** There is an absolute power to dispose, save as it relates to other mortgagees with a prior right.

The Barbados Maritime Ships’ Registry confidently offers the discerning ship operator a first-class personal service in all aspects of ship registration.

**Q:** Does the legal system give mortgagees any specific rights not generally found in well drafted standard forms of mortgage?
**A:** The mortgagee does not become the owner of the ship or share, to which the registered mortgage relates by reason only of the mortgage, and the owner does not cease to be the owner by reason only of the mortgage. The mortgage is security for a debt only, and does not transfer any other rights to the mortgagee.

**Q:** Are there any other matters in the context of the rights of the mortgagees under the legal system which should be emphasised?
**A:** A mortgage may secure future advances and shall not be extinguished or lose its priority because all previously outstanding obligations secured thereby have been fully repaid or otherwise performed.

**Q:** In the event of an assignment of the secured indebtedness, will the rights and interest of the mortgagee be automatically transferred to the assignee?
**A:** The Shipping Act provides for the transfer of a mortgage in the prescribed form. The transfer is annotated on the mortgage by the Registrar, with a note that it has been recorded and with the date and time stated thereon.
An anniversary will often be recognised based on a mere milestone attainment. It assumes significance and relevance when that milestone may safely be used as a basis for reflection on the character and content of the preceding years. Such reflection, therefore, has no rigid numerical or statistical basis of measurement as a point of departure. Since modern international business legislation in Barbados started with the 1965 International Business Companies Act, 2017 is as good a year to reminisce, as it is to do so two years earlier, or, indeed, one year later. For although 1965 marked that legislative introduction, Barbados had hitherto played an important role in the international commerce of the 17th, 18th and 19th centuries. Its legendary status as the sometime largest global exporter of sugar and its related derivative products was one of a kind, which has often encouraged comparison with the global dominance of the post 1973 Oil Lobby.

Notwithstanding this long range diffuse dominance, the emergence of the 1965 legislation may be seen as the start of an active effort by Barbados to effectively benefit from the internationally mobile capital of the 20th century. Indeed, the birth of the legislation and its subsequent use has mirrored the structure and function of Barbados’ later financial services development. As a tool for the tax planner, its transparency has been a critical component of success, for Barbados, as a tax treaty jurisdiction, has consistently required a piece of legislation which not only attracts tax - albeit a low one - but also carries an imprimatur of certainty and transparency. In this regard, the licensing regime which was introduced just prior to the 30th year of the Act was a deft countervailing measure to the later jurisdictional transparency attacks of the OECD and other regional and international interest groups.

The new administrative protocol as regards licensing is timely, as the international business company legislation reached its 50th year of operation. It has become evident that, as the global economy continues to expand exponentially, greater opportunities are presented for the use of the international business corporation (IBC). Its ability to perform an international licensing and franchising role, and to receive favourably taxed royalties, remains legendary. So, too, is its frequent use in the areas of commodities trading, international product development, international sports promotion and international human resource and deployment services - which are merely a few examples of its extraordinary versatility. The IBC also continues to serve as a corrective agent, as investors and owners seek to employ creative ways of managing declining and shifting revenues, brought about by the contagion of falling oil prices. With an absence of wage growth and the ever present prospect of economies sliding into deflation, many international planners continue to search for ways of cleansing a toxic cocktail where oil has served as an important catalyst, even if current fears are exaggerated. Nevertheless, whatever may be the true reality and its consequences, the IBC as a planning structure continues to weave its own magic, simplifying planning responses and solutions.

While the IBC mirrors the constant and growing opportunities of the other products within the international business architecture, it also remains challenged by the overarching jurisdictional issues surrounding the need for effective business facilitation. As the myriad of Barbados’ international business legislation soars past 50 years, and in some cases soars towards 50 years, the challenge of efficiency of facilitation within the local bureaucracy is no less significant than the challenges emanating from the international regulatory actors.

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**CASE STUDY**

**Bringing Flexible Workspaces to Barbados**

Regus is the leading global provider of flexible office spaces, with a worldwide network of nearly 3,000 locations in 900 cities across 120 countries. At Regus, we provide professional, high-quality office space for flexible durations and in varying sizes. This includes ‘virtual offices’, where clients have a prestigious address, with a dedicated team to manage their calls and mail, and ‘professional meeting rooms’, where clients have everything they need to hold productive meetings. Another of our products is Businessworld, which gives members access to Regus’ 2,000 business lounges across the world.

As the only truly global workplace provider, Regus has built a network of business centres across the globe. Adding Barbados to this global network was made easy, given Barbados’ vibrant business community. The unique mix of businesses operating in Barbados - from home-grown entrepreneurs to start-ups, and from regional and International businesses to offshore companies - together with Barbados’ developed infrastructure, makes it the ideal location for Regus’ flagship centre in the Caribbean.

The investment climate in Barbados, which continues to attract both local and foreign investors, was a key factor in our decision to establish Regus in Barbados. Our superior standard, ultra-modern business centre at One Welches is testament to this, as it appeals to both local and international businesses and has fast become a hit with the Barbados business community.
The “For Sale” sign sits in front of your property and friends and family have been notified - you have decided to relocate to a new country! There are many reasons that could have led to this decision:

• Brexit has created great uncertainty and the value of your savings plunged in sync with the value of the pound
• the personal tax rates imposed on high net worth individuals (HNWIs) are steadily increasing in your home country
• shoveling snow has suddenly lost its appeal, plus a myriad of other reasons.

Mobility is not much of a challenge in this day and age, and therefore the only question remaining is - where are you heading?

**Barbados is uniquely placed to attract HNWIs looking to relocate to another country …**

**What makes Barbados an attractive jurisdiction?**
This environment has certainly created opportunities for those countries with thought leadership and vision, such as Barbados. Although our island is known for its nice weather, scenic landscapes and beaches and high standard of living, Barbados is uniquely placed to attract HNWIs looking to relocate to another country for other reasons.

Its Special Entry Permit regime allows foreign nationals who make an investment of at least US$2M, to reside in Barbados with their families. This immigration programme is supported by several tax incentives.

Resident, but non-domiciled, individuals are taxed on local income and on foreign income when remitt to Barbados. Also, tax rebates are granted on remittances of foreign income as an incentive to remit foreign currency to Barbados. This rebate varies depending on how much foreign income is remitted, and the effective rate applicable can be as low as approximately 2.3%.

Finally, and not the least, Barbados has concluded many double taxation agreements (DTAs), which are a definite asset when receiving income from sources outside Barbados.

**Why DTAs are important**
The DTA’s main purpose is to avoid double taxation. Being able to rely on a DTA is important when considering dual resident status, which may be a concern, especially in the year of relocation. This was certainly highlighted by the recent decision of the Tax Court of Canada in the Conrad Black case.

In 2002, Lord Black, a former newspaper publisher and author, was considered a tax resident in both Canada and the UK, under domestic tax rules. The Canada Revenue Authority (CRA) reassessed Lord Black on income not specifically mentioned in the Canada-UK DTA, such as US income, on the basis that, pursuant to the Canadian Income Tax Act, Lord Black was a resident of Canada. The Court decided that, for the purposes of the Canada-UK DTA, Lord Black was deemed to be a UK resident. However, the Court also ruled that the CRA had the right to tax Lord Black, according to Canadian domestic rules, on income not specifically referred to in the DTA.

This decision could have possibly led to double taxation if the UK had also sought to impose tax on the US income, since the DTA did not apply to prevent this. The DTA was subsequently amended to add Article 20A - Other Income, effective 2005. According to the Organisation for Economic Co-operation and Development Commentaries and well-recognised authors such as David A Ward, the Other Income Article applies to income from countries not party to the DTA. If this Article had been in force in 2002, the judges would have likely ruled in Lord Black’s favour, as the US income would have benefited from treaty protection. The Conrad Black case is instructive, as it highlights the importance of well-negotiated DTAs.

In this regard, Barbadian residents derive significant benefits from Barbados’ network of DTAs. It is worthy of note that the wide majority of these treaties include the Other Income Article, the lack of which caused serious implications in the Conrad Black case.

The range of incentives offered by Barbados from an immigration and tax perspective, as well as its treaty network, sets Barbados apart. So where are you heading? Barbados of course! 🏴‍☠️
Let’s say you are a foreign investor planning to use Barbados as an international business and financial services centre. Chances are, you are thinking about setting up an International Business Company (IBC).

Nothing unusual about that - after all - it was created to attract people like you, and offers a number of benefits.

To begin with, taxes range from 2.5% to 0.25%, depending on the level of profits. In addition, there is no withholding tax on dividends, interest and other payments made to non-residents or to another IBC. What is more, Barbados has no capital gains tax, and IBCs are exempt from taxes and duties on a variety of materials and items you might need to bring in for use in the business. Additionally, of course, IBCs are exempt from exchange controls. It’s a no-brainer, surely!

In fact, you might be surprised at the number of foreign investors who are now embracing an alternative that offers benefits – and a degree of flexibility – that an IBC cannot. That alternative is a Regular Barbados Company (RBC).

The first benefit a RBC provides is the ability to do business both locally and internationally. An IBC, on the other hand, can only do business outside of Barbados. Some would say this dual ability offers investors the best of both worlds.

Of course, RBCs will pay taxes on “local” earnings at the local rate of 25%. But if the international or “export” side of the business is the real money-maker, the local tax rate can be significantly reduced by a foreign exchange earnings credit. In fact, your local tax liability can perhaps be as low as 1.75%.

The second major benefit of a RBC is access to Barbados’ network of double taxation agreements (DTAs). In many cases, Barbados-based IBCs are denied this access by the participating countries, and this means that some sources of income may be taxed more heavily at the “domestic” rate of the participating country.

Take, for example, a subsidiary company in Canada which, as part of an international holding structure, pays dividends to a Barbados-based IBC. Without the benefits of the Barbados-Canada DTA, those dividends may be subject to a withholding tax of 25% in Canada. On the other hand, by setting up a RBC with its access to the treaty, the parent company may be able to reduce this withholding tax.

In addition to treaty access, RBCs may have several other benefits over IBCs. For example, there is no restriction on business activities and no annual licensing fee. Also, dividends paid by a RBC to non-resident shareholders are exempt from withholding tax, provided they are paid out of foreign-sourced income.

Of course, if you choose a RBC, you will have to comply with the same laws that local companies operate under, such as the value added tax (VAT) regime, customs duties on imported goods, and exchange controls. However, the VAT regime and customs duties should have a minimal impact on RBCs doing primarily international business, and an exchange control waiver can usually be obtained for such companies.

In essence, while the IBC will likely remain the most popular tool in Barbados’ international business toolbox, the RBC is gaining in favour. Indeed, one of the island’s best kept secrets isn’t so well-kept any more.
In 1959, Cuba entered into an era of near complete isolation from the rest of the world, as a result of the diplomatic and trade embargo imposed by the United States, emanating from ‘La Revolucion’ and Fidel Castro’s rise to power. Within the western hemisphere, only Canada and Mexico retained any type of relations with Cuba. This continued until, in 1972, amidst the height of the ‘cold war’ between the United States and the former Soviet Union, Barbados, along with several other CARICOM nations, made the bold move to re-establish relations with their Caribbean counterpart, in a show of regional solidarity.

Barbados and Cuba have since established reciprocal diplomatic representation, through embassies established in Bridgetown and Havana, respectively. The solidifying of this good relationship between the two Caribbean countries has led to, among other achievements, a 1996 bilateral investment treaty (BIT), a 1999 double taxation agreement (DTA) and the 2000 CARICOM-Cuba Trade and Economic Co-operation Agreement. Barbados is one of few nations that boasts both a BIT and DTA with Cuba, which offer advantages to foreign investors. A wide range of special purpose vehicles permitted under Barbados law, as well as investment types, are encompassed by the BIT.

It is axiomatic that concerns exist with respect to foreign investment in Cuba. The Cuba-Barbados BIT provides for ‘most favoured nation’ treatment and standard dispute resolution provisions for investor/host state disputes, as well as the referral of disputes to international arbitration, including the Court of Arbitration for the International Chamber of Commerce. This is an added safeguard to Cuba’s robust investment protection framework, following the 2014 implementation of Ley No.118 de Inversion Extranjera, which explicitly gives authorisation for investment in many sectors, subject to Government approval. This investment legislation incorporates several fundamental investment standards, including “full protection and security”, a concept consistent with corresponding international law, in that it prohibits expropriation, except if in the public interest, but mandates payment of compensation. It also includes a 168-page portfolio outlining various opportunities for foreign investment.

The scope of the Cuba-Barbados DTA includes both personal income tax and tax on profits in Cuba, whereas most of Cuba’s other DTAs are limited to income only. The Cuba-Barbados DTA allows for the minimisation of tax in Cuba with regard to certain returns on investments. It is also worth noting that Cuba’s 2014 investment legislation cuts taxes imposed on foreign investment, specifically permits wholly-owned foreign investments, simplifies registration requirements, and respects intellectual property rights.

The liberalisation of the Cuban economy has seen increased activity from traditional markets such as Canada, Europe, and Latin America. This is expected to endure as Cuba’s investment environment continues to improve. Inconceivable only a few years ago, the USA was, and will likely continue to be, at the forefront of this new wave of Cuban-bound foreign investment, given the easing of restrictions on both sides. In Cuba, the Government now permits its citizens and foreign investors to operate privately. It is no surprise that Cuba does not have either a BIT or DTA with the USA, but given that these types of agreements can take years to negotiate and eventually come into effect, there will be no direct relief available for US interests in the near future. In the interim, short of proper structuring, this means that dividends received by a US individual from a Cuban corporation would not qualify for the reduced 20% qualified dividends benefit provided under the Internal Revenue Code. Of course, given the Cuba-Barbados and USA-Barbados treaty nexus, solutions abound for further benefits, by structuring US investments into Cuba through a Barbados company.

The multi-faceted and long-standing relationship between these Caribbean colleagues is characterised by strong diplomatic relations and further defined by the framework of tax and investment protection treaties. Added to these the continued efforts by Cuba to entice foreign investment, ideally positions Barbados as a preferred conduit for Cuban bound investment. Attractive opportunities for investment include tourism, agriculture, construction, mining, renewable energy and transportation. This has not gone unrecognised, as Barbados continues to pursue its preferred status with Cuba, including the conclusion of an agreement with the Chamber of Commerce of Cuba in May 2016, which has established a platform for the further exchange of information on opportunities for trading in goods and services, as well as the promotion of investment projects. As Cuba continues to draw the interest of foreign investors, so indeed does Barbados as the intermediary for this investment.

Barbados is one of few nations that boasts both a BIT and DTA with Cuba ...
Achieving Financial, Personal and Corporate Goals in Barbados

Individuals, business owners, financial planners, accountants and lawyers have an unlimited range of choices when selecting a country to accomplish their financial, personal and corporate goals.

At Forvest Group, we wanted to offer our clients the best overall jurisdiction into which to expand our business. We evaluated many countries to select the best legislation, legal system, case law and financial services regulatory environment. Today, both clients and their advisors demand tax and regulatory-compliant structures, administered by highly trained professionals, to protect and enhance their wealth and businesses.

We sought to offer a range of personal and corporate trust services, discretionary and advisory investment services with a global, multi-market, multi-currency perspective, individually customised private placement life insurance options, international private pension plans and philanthropic advisory services.

Forvest chose Barbados because it offers:

- A conservative, well-regulated jurisdiction with a good reputation and long history in financial services
- 37 double taxation treaties
- Five tax information exchange agreements
- 11 bilateral investment treaties
- Daily international airline connections to Canada, the Caribbean region, Europe, Latin America, the UK and USA
- A highly-skilled and well-educated workforce
- State of the art telecommunications and technical resources
- World-class, competitive corporate and personal planning structures, such as segregated cell companies, international business companies, international societies with restricted liability, exempt and qualifying insurance companies, reserved powers trusts, private trust companies and foundations
- A broad range of personal and investment real estate options
- Sporting events: polo, cricket, horse racing, soccer, sailing, diving, surfing
- And finally … some of the best restaurants in the Caribbean!

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FIRST PROVIDER CELEBRATES OVER 15 YEARS IN BARBADOS
Mr. Frederic M. Reiss is often credited with being the “father of captive insurance”, as he was the one who first brought the concept of captive insurance together for one of his clients in the 1950s. It is reported that his client owned several mines, scattered across various locations, and that Reiss assisted him in creating an insurance company to essentially turn one of his bigger company expenses into a potential asset, whilst insulating the company from the high premium cycles of the traditional insurance sector.

Through this process, captive insurers control their own risk by insuring themselves, or by insuring a known and controlled group. This concept has evolved over time into what is now a multi-billion dollar industry, with companies across various industries utilising international insurance structures in much the same way as Mr. Reiss did in the 1950s. However, it is now done for many more purposes and to replace several types of insurance policies.

With some degree of contrast, traditional insurance is a risk management tool used primarily to hedge against the possibility of financial loss from a risk event. To make insurance a viable enterprise, insurance companies use the concept of “pooling” and the law of large numbers, to put many policy holders into one economic space where losses are expected, but the timing of the losses will mean that not everyone will have a claim at the same time. What’s more, the policyholders are wide and varied, and are often completely uncorrelated to each other, apart from sharing the same insurance company.

If we take the two concepts together, they are both hedging against a financial loss, but in different ways. Regulators, therefore, have to acknowledge that the manner in which captive insurance companies manage financial risk differs from the way traditional insurance companies manage risk. Captives insure themselves or a controlled group, where they know everything about themselves and control their risk, whereas insurance companies insure large numbers in a pool of people they don’t know, but assume claims will occur based on statistical average.

In acknowledging the differences, regulators ought to create a regulatory environment that fits the differing circumstances of the traditional insurer versus the captive insurer … that is what the team at the Financial Services Commission in Barbados does so well.

The FSC will continue to monitor the trends, assess the entities, and evolve the regulatory framework to fit prevailing circumstances of the day. The FSC considers this to be dynamic regulation, part of the nurturing regulatory environment that currently exists in Barbados.
Barbados Captives: Why Investors Favour this Unique Jurisdiction

BY PAUL JENKINS

A Captive is a licensed insurance company that is a wholly-owned subsidiary of a non-insurance entity, established to typically insure the risks of its parent and affiliates. This strategy of self-insurance is a savvy and sophisticated method that manages retained risk in a formal manner. Captive insurance also offers greater control of insurance prices, specialised risks, hard to insure risks, and underwriting profits.

Barbados has been exemplary in its unique captive insurance offering and the world is taking notice. Currently ranked among the top 10 captive domiciles globally, the jurisdiction was recently recognised as a leader in the offshore ‘captive’ industry and was “highly commended” at the August 2016 US Captive Service Awards in Burlington, Vermont.

There are a number of glowing, unmatched attributes that make Barbados unique, but beyond beautiful beaches and friendly faces, its globally-recognised local talent stands out - educated, experienced men and women possessing deep knowledge and tangible experience in the captive self-insurance industry. These hardworking individuals - accountants, actuaries and lawyers - can staff an office at a fraction of the cost applicable to other competing jurisdictions. Further, these individuals have the same, if not greater, education, experience and knowledge of the captive self-insurance strategy, benefits of tax treaties and overall jurisdictional benefits, as professionals in competing jurisdictions.

Barbados has also demonstrated the unique harmony between the private and public sectors. Recently, in planning new legislation, the ‘captive industry’ was consulted by Government, leading to highly relevant company legislation changes (Companies [Amendment] Act 2016-1) and the introduction of incorporated cell company (ICC) legislation in February 2016. The following quote from Minister of International Business, Commerce and Small Business Development, Donville Inniss, illustrates this harmony: ‘The Government of Barbados understands the critical importance of its international business sector and the need to introduce new and relevant legislation to underpin its growth ...’

This new legislation is aimed at providing businesses with the flexibility to structure specific operations through placement in separate incorporated cells.

ICC legislation allows investors to legally separate assets and liabilities within a number of financial service activities. This is incredibly important, as there can be an unlimited number of incorporated companies (termed cells) – each of which is treated as a separate legal entity. As such, each cell is considered to be a limited liability company and has its own governance structure, with its own Board and Officers. This structure also allows for each cell to separate its assets, liabilities, shareholder agreements and other legal obligations from other cells within the ICC. Although each cell is effectively its own legal entity, all cells benefit from the lower costs associated with the shared administration of the ICC as a whole.

As one of the world’s largest captive domiciles, Barbados has been working with international investors since the mid-1960s, and this unique jurisdiction has emerged as the domicile of choice for international, globally-focused investors.

With careful Government supervision, excellence in the workforce and a strong private-public sector partnership, Barbados will continue to be the international financial and wealth management centre of excellence for global entities.

CASE STUDY

Barbados: an Obvious Choice for Legal Outsourcing

Innovate LSO Solutions provides legal and strategic outsourcing services for international law firms and companies. We use Barbados’ resources to undertake the voluminous, time-consuming tasks, e.g., contract and IP portfolio management, thereby lowering costs and maximising efficiencies.

Barbados is an obvious choice for legal outsourcing with a unique value proposition: it is nearshore (close to North America); there is no language barrier and it is a common law jurisdiction with exceptional education standards.

Cultural affinities are important for our clients; our team in Barbados has undertaken complex contract reviews, where understanding the context of the documentation was of paramount importance.

Innovate LSO believes that Barbados’ greatest asset is its highly educated workforce. The island has a first-class education system that produces top quality university graduates every year. We draw upon this intellectual capital to provide highly competitive service level agreements, e.g., fast turnaround times.

Our operation is reliant upon a strong telecommunications network. There are various companies providing fibre network solutions here in Barbados and this competitiveness keeps costs down, which we can pass on to our clients. Finally, and of equal importance for business continuity purposes, Barbados is also a mature and well-regulated jurisdiction with political and social stability.
A captive insurance company is a business established by a parent group, with the specific objective of covering the risks to which the parent is exposed - a type of self-insurance. This is an alternative form of risk management that is becoming a more practical and popular means through which companies can protect themselves financially, whilst having more control over how they are insured.

International business companies and captive insurance companies see the benefit of doing business in Barbados as a result of a number of factors. These include:

- Barbados’ double taxation and investment protection agreements
- Legislation to support several international structures
- A stable economic, political, social and technological environment
- Strong regulatory oversight
- An open and transparent financial system, and
- A mature banking and financial services sector.

As the captive insurance industry successfully develops in today’s evolving and dynamic market, the banking sector plays a crucial role in this success by providing innovative banking solutions. The island’s expert bankers demonstrate a thorough understanding of the industry, and are able to provide tailored solutions to the captive client, from the suite of banking products and services on offer.

... the banking sector in Barbados remains committed to the success of the captive insurance industry ...

These products and services can be broken down into the following areas:
- Investment and Asset Management
- Cash Management Solutions, and
- Trade Finance.

**Investment and Asset Management**

In terms of the capital investment and premiums of the captive insurance company, banks in Barbados will work with the captive to create investment solutions based on individual securities or structures, or based on a fully-funded collective investment approach. Expert investment managers offer advisory or discretionary services designed to meet the needs of the client.

In this area banks will specialise in the following products and services:
- Securities Trading
- Structured Products
- Fixed Income and Equity, and
- Custodial Services.

**Cash Management Solutions**

Banks in Barbados provide international standard cash management solutions for the international business sector. The solutions are made up of integrated tools that help the captive client manage and monitor their liquidity easily and more effectively. The products and services offered by these solutions include:
- Accounts in all major currencies
- Global cash management
- Fully automated wire transmission
- International money orders and drafts
- Extensive correspondent banking access
- Internet banking
- Cross-border account set up, and
- Foreign exchange products and services.

**Trade Finance**

Our banks have years of experience in international trade and have developed a range of trade services. Banks have invested time, money and professional expertise to create a comprehensive range of trade services, flexible enough to meet our clients’ fast changing needs, and precise enough to help generate the efficiencies required to maintain competitiveness. The banks’ main goals are to create tailor-made solutions to make international trade easier and faster, and the key services offered include:
- Standby letters of credit
- Documentary credits and bank guarantees, and
- Back-to-back letters of credit.

Further complementing banking in Barbados, is the link of some banks to their Canadian parent company. This offers further international recognition and access to additional products and services beneficial to clients, such as robust investment management platforms, and also helps bolster the banks’ technology, legal and compliance capabilities.

Thus, the banking sector in Barbados remains committed to the success of the captive insurance industry. Barbados is currently ranked among the top 10 captive domiciles globally. At the 2016 US Captive Services Awards, Barbados was “Highly Commended” for its ongoing commitment to the captive industry, having continued to increase both its number of licenses and its premium volumes, and, in particular, having introduced the incorporated cell company legislation in February 2016.

As the industry grows, the banking sector will continue to focus on consistently enhancing client experiences, providing them value for money, a superior level of tailored financing solutions, and high quality service.
First-Class Medical Training Facility

American University of Barbados (AUB) laid the foundation for its School of Medicine in February 2012. Barbados was chosen due to its potential for attracting medical and educational tourism.

AUB currently has students from 10 different nations. Enrolment of foreign students is projected to be approximately 500 for the year 2017, reaching 1,500 over the next two years. AUB produces world-class medical doctors by offering an integrated, problem-based and USMLE-focused curriculum to its students. Also, innovative teaching techniques, that include use of 3D animations and educational video games, make learning easy and interactive.

American University of Barbados (School of Medicine)

We are growing . . . .

Some recent landmarks for American University of Barbados are:

• Era’s Lucknow Medical College & Hospital (India), the parent institute of AUB, has received University status by the Government of India

• With plans for further expansion, AUB is in the process of acquiring a property in Barbados in a prime location

• AUB is now one of the few medical schools in the Caribbean that is listed with the Medical Council of India

• In addition to our affiliate hospitals in the USA, Malta and Philippines, AUB students are now able to carry out their clinical rotations at The Psychiatric Hospital, Barbados.

Five years after its establishment, with the strong financial support and intellectual capital of Era’s Lucknow Medical College behind it, AUB is on its way to becoming a leading university in the Caribbean.

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Factors to Consider in Structuring Your Captive’s Investment Portfolio

BY GORDON ANDERSON & RYLE WEEKES

For both existing and new captives, one of the most important considerations is the structure of the investment portfolio - what is often referred to as the “asset allocation”. The initial capital requirement of US$125K in Barbados is typically held in a deposit instrument for absolute principal protection. As premiums start to flow into the captive, the next consideration is the investment strategy of the captive.

The investment objective of most captives is safety and liquidity …

The investment objective of most captives is safety and liquidity, so initial premiums are typically invested in cash and very high investment grade fixed income. With interest rates at record lows, T-bills and government bonds are not even keeping up with the rate of inflation. As a result, captives should consider diversifying their fixed income into investment grade corporate bonds to increase returns.

Finding the best US or Canadian fixed income manager is not the easiest task. One of the best solutions is to find an investment firm that offers a manager research capability so you are not restricted to underperforming proprietary solutions. This applies not only to finding the “best in class” fixed income managers, but also finding top equity managers as well. The general “rule of thumb” is that fixed income should always be invested in the base currency of the captive, otherwise it becomes a “currency” fund.

If considering adding equities to the investment strategy, the captive must decide whether it wants to use index solutions or “active” managers. If using indexes, the captive should seriously consider “smart beta” index solutions, which have significantly out-performed their respective benchmarks, often better than most “active” managers. However, with experienced manager research, it is possible to find equity managers that also out-perform benchmarks over the long term. It is best to look at equity managers that offer significant “downside” protection, so that when markets drop by 10% for example, a good low volatility equity manager would only be down by 5-6%.

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is referred to as the “downside capture ratio”. This is very helpful if a significant claim needs to be paid when markets are weak.

The most common long term asset mix for captives is 80% fixed income and cash and 20% equities. However, it is important that the manager has discretion to adjust the asset mix, as there are times when one would want to move out of equities into cash and other times where one would want to overweight equities, as has been the case in the last eight plus years.

Economic theory related to managing risk, often referred to as the “efficient frontier”, has concluded that the lowest risk portfolio over the last 50+ years is approximately 15% equity and 85% bonds, even lower than a 100% bond portfolio. This supports the typical asset mix for captives versus having 100% portfolio in fixed income.

The largest risk with a diversified portfolio of equities is that stock markets globally will drop significantly, as they did in the 2000-2002 technology correction and in the 2007-2008 global credit crisis, where equity markets were down approximately 50% as measured by the MSCI World benchmark. Adding some top “long/short” equity managers can significantly lower the downside risk - in fact, in 2002, when markets were down 50%, the benchmark of “long/short” managers was actually slightly positive as most managers moved significantly to cash and also hedged against falling stock prices.

Some captives have fronting requirements, either by way of letter of credit (LOC) or RSA (Canada) or re-insurance trust (US). In this case, the investment portfolio is held as collateral in support of the LOC or RSA/re-insurance trust, resulting in a more conservative portfolio, typically mostly fixed income and cash.

Of course, the choice of the captive management company is also very important, and fortunately there are many good options in Barbados.
EC: Tell us a little about the development of the Captive industry in Barbados.
NC: The Captive industry in Barbados dates back more than 30 years, around the time we opened an office for Marsh Captive Solutions. The growth of the industry, in its formative years, was aided by a Federal Excise Tax exemption, which saw several US-owned Captives being established at that time. After the exemption was discontinued, growth in US business slowed. However, the tax treaty with Canada supported growth in Captives from that country. Although Canada recently signed tax information exchange agreements with various countries, which reduced the competitive advantage that Barbados had for Canadian-owned Captives, through our significant history with Canada and recognition in that country, we have been able to maintain our position as a domicile of choice for Canada. More recently, we have signed a treaty with Mexico and are working to develop the same with other countries in Latin America. We see that region as a growth area for Barbados in the future.

EC: Where is the Captive industry going and what is the current industry trend?
NC: We would like to see an increase in the number of new formations in Barbados and have been pursuing markets outside of Canada to bring about that change. I believe that developing business in Latin America would help to support our growth as a domicile. Additionally, existing Captive owners in Barbados have been exploring other uses for their Captives, including whether to write different lines of business, such as employee benefits and cyber. Many of the Captives are considering writing these new coverages and we have encouraged our clients to consider sophisticated coverages that could be relevant to them. Additionally, some have been looking at taking higher limits for the risks they are already writing.

EC: How is Barbados positioned to attract new Captives?
NC: Over the past 30 years, we have built a solid infrastructure, based on our long history in the Captive industry. In particular, due to the large amount of international businesses on the island, we have attracted a wealth of professionals to the domicile. In terms
of the Canadian market, all of the well-regarded Canadian banks have a presence here and that brand recognition helps to attract new business. Our annual International Business Week Conference features both local and international speakers, and we are confident that future events will attract more international delegates. Of course, we also have new legislation which expands our product offering.

**EC: What is new in Captive Legislation and Regulation in Barbados?**

**NC: Effective February 2016, Barbados enacted legislation providing for the establishment of incorporated cell companies (ICCs), thereby offering global investors yet another reason to do business in Barbados. This ICC legislation, unlike the existing segregated cell legislation, allows for each cell in the structure to be viewed as a separate entity, with its own assets, corporate governance and limited legal liability within the cell. ICCs are quite flexible, cost-effective and, once incorporated, may establish any number of cells desired. Since 2011, Barbados has offered segregated cell company legislation for those interested in that product. As long as it is done within the requirements of the law, the cells of ICCs established here can be transferred to segregated cells and vice versa. This is another example of Barbados’ commitment to maintaining modern and progressive legislation in the domicile, and creating new products as part of our international business and financial services offerings.

In terms of regulation, captive insurance companies are regulated by the Financial Services Commission (FSC), which is an integrated regulatory body, established in April 2011, by virtue of the Financial Services Commission Act (2010). The FSC is responsible for supervising and regulating non-bank financial institutions in Barbados, including insurance companies licensed or registered under the Exempt Insurance Act, Cap. 308A and the Insurance Act, Cap. 310. Captives in Barbados therefore fall under the purview of the FSC, and the industry enjoys a good professional relationship with the regulator.

**Footnote:**

Ezra Catwell, Director, Investment Facilitation, Invest Barbados interviewed Nicholas Crichlow, Marsh Captive Solutions.
Against the backdrop of a struggling recovery, central banks around the world have undertaken significant and increasingly creative methods to stimulate economies. In concert with an abundance of global savings, these policies have resulted in some of the lowest rates of interest ever seen in many markets. In fact, significant portions of the global government bond market are trading at negative yields, a challenging new paradigm for market participants.

**Investment Implications for Clients**

Barbados’ international clients tend to have a North American connection, and while the extremes of negative rates have not crossed the Atlantic, clients still face a challenge. Fixed Income markets, particularly the short-term, high-quality segment, have long been the home of many of our institutional investors, including captive insurance companies. To get a sense of how their investment experience has changed over time, we can consider the performance of the Bank of America Merrill Lynch 1 to 5-year AAA-A US Corporate and Government Index. According to Bloomberg, from December 1987 through to September 2016, this Index posted an average annual return of 5.3%, but over the last five years the average annual return has declined to just 1.5%. Also, the current yield to maturity of the Index is only 1.1%, foreshadowing possibly weaker results ahead.

These deteriorating returns have been squeezing captives that rely on this income to cover administrative and other costs. It has also been an impediment to new captive formations, because the combination of a soft insurance market and low expected investment returns has mitigated against positive feasibility studies. Other institutional investors are also struggling, some even more significantly. Pension funds, for example, experience a double impact, as a lower discount rate applied to future liabilities increases their current value, and low expected returns make it more difficult to generate higher returns. Thus, where there is already an unfunded pension liability, the effect of these factors is to increase it.
The Investment Response

Faced with declining yields offered by traditional investments, investors determined to increase returns have responded in a variety of ways. On the fixed income side, they have undertaken increased credit risk and/or extended duration, in a hunt for higher yields, while others have included allocations to equity markets. These strategies have generally worked well over the past several years, with corporate credit, longer maturities and equity markets tending to outperform in the post-credit crisis period. However, such allocations are not without their risks, and the fact that these strategies have worked well in the past is no guarantee that they will continue to do so in the future.

We believe that lower rated corporate exposure, for example to BBB-rated credits that have not been widely used by this type of client in the past, may offer reasonable potential, but should be undertaken with caution and on a well-diversified basis. Such prudence would help to reduce potentially adverse impacts on liquidity, and the risk that a single credit event could have an outsized impact on portfolios. Diversification can be a challenge for the mid-sized institutional mandates typical in our jurisdiction, so pooled funds are generally favoured - although clients and their investment advisors should be mindful of the costs embedded. Extending duration is a fixed income alternative which we would be more reluctant to consider, for while it may have worked well historically, interest rate risk is not generally desirable in what could be a rising rate environment.

Continued on page 32
Diversification into global equity markets is the option that we have advocated over the past several years, particularly with those clients who have had no previous exposure. Clients that have included allocations to equities have generally benefited from the post-crisis recovery in equity markets, but there is a necessary limit to this benefit. While a 10% to 20% equity allocation may improve risk-adjusted returns, versus a fixed income portfolio, higher allocations can result in an imprudent level of risk for our conservative client base.

**Other Considerations**
There are other sectors that our clients periodically query in the search for better returns. These include:

- Hedge funds and other alternative investments, which have been increasingly used in the pension industry over the past several years
- The emerging markets, including both fixed income and equities, which offer higher risk premiums and the potential to benefit from higher growth and better demographic trends, and
- Structured notes, in their varied form, which have been included in institutional client portfolios.

These market segments can be very complex and subject to risk factors that are not suitable for all investors. For this reason, it is critical that investment advisors fully understand the circumstances of their clients, and that both advisors and clients understand the features of such securities, and the implications of incorporating such strategies in an investment portfolio.

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... and so much MORE

Activities:
• Fun Cruises
• Running and Hiking
• Surfing
• Horse Racing and Horse Back Riding

Places to Visit:
• Art Galleries and Museums
• Fish Markets
• Traditional Rum Shops
• Farmers’ Markets

Entertainment:
• Modern Cinemas
• Thrilling Polo Matches
• Local Theatre Productions
• Motor Sports
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• Local Theatre Productions
• Motor Sports

the list goes on . . .
New Era of Digital Currencies
BY GABRIEL ABED & OLIVER GALE

Bitt is a Financial Technology company that utilises distributed ledger technology to improve speed, efficiency and significantly reduce the costs of the payment system. Barbados and the Caribbean region have been plagued by persistent low economic growth, a savings crisis and the challenge of “derisking”, where international banks have in some cases ceased operations with local banks to reduce their perceived risk profiles.

Bitt will directly connect merchants and consumers using frictionless mobile money, offering a low-cost international cash and virtual currency remittance service …

Currently, the pace of the payment system acts as a bottleneck for economic activity. It harkens back to a time when paper contracts were shipped back and forth between counterparties for physical signature in order to finalise a contract. Much like how email sped up the pace of doing business, a jump to real-time payments can also accelerate economic activity. By reducing time of payroll, accounts receivables and other financial interactions, Bitt can speed up the money conversion cycle of a business or government department.

Fee structures in traditional payment systems are based on sharing arrangements between vast networks of financial institutions; each taking a processing fee and using control of their financial channel to their benefit. These fees, often high and frictional, make sending money throughout the Caribbean quite cumbersome and costly.

Bitt is building the financial ecosystem in the region to remedy these issues experienced daily. Bitt will directly connect merchants and consumers using frictionless mobile money, offering a low-cost international cash and virtual currency remittance service, and providing liquid digital currency to traditional currency trading markets through the Bitt Exchange platform.

The Bitcoin blockchain represents the world’s most secure, immutable, and distributed database and the applications of this technology are as far reaching as those of the internet itself. Leveraging the disruptive technological advancements of the Bitcoin blockchain, Bitt promotes financial inclusion by empowering customers with access to an affordable money transfer service in the Caribbean and Latin America. By being the first mover of this market in the Caribbean, Bitt has positioned itself to be a huge part of the future of this revolutionary change by leading innovation, compliance, business partnership and adoption in this region. This innovation in the payments system can motivate consumption and increase much needed economic growth in the region.

Why Barbados?
Both co-founders, Gabriel Abed and Oliver Gale, are Barbadian citizens, and have always been passionate about the growth and success of their home country’s economic development. Their initiatives have contributed to Barbados being among the first in the region to move forward with governmental and regulatory discussions to operate blockchain-based mobile money within the region.

This innovation in the payments system can motivate consumption and increase much needed economic growth in the region.
The Common Reporting Standard (CRS) is part of a global standard initiated by the Organisation for Economic Co-operation and Development (OECD), introduced to facilitate the adoption of a common approach towards greater tax transparency among participating jurisdictions. More than 90 jurisdictions have committed to the CRS, with more than 50 early adopters.

Barbados, as an early adopter, is earmarked to begin the automatic exchange of information with partnering jurisdictions starting in 2017 for tax year 2016.

Reporting obligations under the CRS

Financial institutions (FIs) in Barbados will have specific due diligence and reporting obligations. They will be required to gather sufficient data to correctly establish the tax residence of each individual and entity for which they hold “reportable accounts”, to determine whether the account holder is a “reportable person” (any entity or individual who is a resident of a country that is a signatory to the CRS).

Reportable accounts include accounts held by individuals and entities (including trusts, companies and foundations). There is also a requirement to look through passive entities to report on controlling persons.

The FI will then be required to obtain certain information for each reportable person and forward that information annually to the Barbados Revenue Authority. This information includes financial information on reportable accounts, i.e., interest, dividends, account balance or value, income from certain insurance products, sales proceeds from financial assets, and other income generated with respect to assets held in the account or payments made with respect to the account.

The Impact of CRS on Barbados’ Trusts

BY AMANDA LASHLEY

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Entity classifications
Entity classification is a key factor of the CRS, since FI’s have reporting obligations for any “account” which is held by a reportable person, whereas non-financial entities (NFEs) do not have those obligations.

There are four types of FI classification:
- Custodial institutions
- Depository institutions
- Investment entities, such as Trust Companies, Asset Management Firms, Trusts, Portfolio Holding Companies and Mutual Funds, and
- Specified insurance companies (unless they present a low risk of being used for evading tax and are excluded from reporting).

An entity that is not a FI is necessarily a NFE. A NFE may fall into one of two categories:
- Passive NFE, or
- Active NFE.

An entity is an active NFE if less than 50% of its income is passive, and less than 50% of its assets produce, or are held for the production of, passive income. In certain circumstances, investment entities residing in non-participating jurisdictions must also be treated as passive NFEs.

Classification of Trusts as FIs under CRS
A trust will be considered a FI, for example, where the trust is managed by a FI, such as a professional trustee, and more than 50% of its gross income consists of investing, or reinvesting and trading, in financial assets. Conversely, the entity would be treated as a NFE if it fails either of the above tests.

Reporting obligations for Trusts as FIs
A trust that is a FI must report on any account that is held by a reportable person. An account holder is any person in relation to such a trust that has an equity or debt interest in the trust. An individual who has made a loan to a trust would be considered an account holder with a debt interest.

For CRS purposes, “an equity interest is considered to be held by any person treated as a settlor or beneficiary of all or a portion of the trust, or any other natural person exercising ultimate effective control over the trust.” Controlling Persons include the trustee(s), beneficiary(ies), and protector(s).

With regard to the treatment of beneficiaries, mandatory beneficiaries are considered to have an equity interest in the trust, and the value of such interest must be calculated and reported, in addition to the value of any distributions made to them during the reporting period. Discretionary beneficiaries must only be reported if they receive distributions from the trust, but only as to the value of such distributions.

Trusts as NFEs
A trust that is regarded as a NFE has no reporting obligations. However, where the trust holds a reportable account with a FI based in a participating jurisdiction, the FI will likely have a reporting obligation to the tax authority in its country of residence with respect that account.

The rules relating to the CRS, particularly with respect to trusts, are complex and, although the OECD Commentary has been helpful in clarifying issues raised by participating jurisdictions, a number of areas of uncertainty in relation to the practical application of the rules still remain. The Barbados Government will shortly be enacting legislation to implement the CRS and will be issuing CRS Guidance Notes, which are expected to clarify some of the areas of uncertainty.

CASE STUDY

Celebrating 10 years of Growth!
KM² Solutions, a leading provider of nearshore business outsourcing services, commenced operations in Barbados in 2007. The Barbados centre, located at the Harbour Industrial Park, is the largest of KM²’s five Caribbean and Latin American facilities. It services a variety of clients and industries, providing support of collections, customer care, back office operations, technical support, automotive floor plan management, vehicle re-acquisition logistics, catalogue sales and servicing, retail sales and servicing, and business-to-business sales.

In line with KM²’s other locations, the Barbados operation is rapidly expanding. It now employs 900 people and is actively recruiting, to accommodate continued growth. The strongly performing Barbados employee team, together with excellent partnership support from Invest Barbados and the Barbados Investment and Development Corporation, will ensure this expansion continues successfully.

KM²’s Barbados centre was recently cited by the Hon. Donville Inniss, Minister of Industry, International Business, Commerce and Small Business Development, as a leading employer, in recognition of its healthcare initiative. The new programme includes a company-contributed group health insurance plan; employee discounts on pharmaceuticals, as well as on fitness centre memberships; and an on-site fitness trainer and doctors, who provide free medical care to employees at the KM² Medical Facility.

KM² Solutions has been repeatedly recognised as an industry leader for excellence in service and values, with a 2012 Caribbean Business Award for Best Caribbean Call Centre and a 2015 Frost and Sullivan Customer Value Leadership Award, among the citations formally acknowledging the company’s unique positioning and commitment to excellence.
The Role of Trust Protector

Traditionally, the main parties to a Trust are the Settlor, the Trustee and the Beneficiaries. However, in recent years, the appointment of Trust Protectors has become increasingly prevalent, to balance the wide discretionary and fiduciary powers that are given to the Trustees under the Trust.

While a Settlor can draft a “Letter of Wishes” to provide guidance for the Trustee, it has no legal status and the Trustee is not obligated to follow their instructions. Since offshore trusts are controlled by Trustees who are often located in jurisdictions far away from the Settlor and the Beneficiaries, the person drafting a Trust may wish to involve a Protector to provide a certain level of comfort for both the Settlor and Beneficiaries.

A simple trust arrangement with a Protector is shown below.

<table>
<thead>
<tr>
<th>Settlor</th>
<th>Trustee</th>
<th>Successor Trustee</th>
</tr>
</thead>
<tbody>
<tr>
<td>Protector</td>
<td>Can Terminate Trustee</td>
<td></td>
</tr>
<tr>
<td>Trust</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Trust Assets</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Beneficiaries</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Anyone can serve as a Protector, but ideally, an impartial advisor, lawyer or accountant who has extensive experience in trust matters, is licensed and regulated and stays abreast of changes in law, should be appointed. The main difference between the Protector and the Trustee is that the Trustee is the legal owner of the assets of the estate, whereas the Protector does not have any ownership, title or interest of the assets held.

In Barbados, the role of a Protector is provided for in the Barbados International Trust Act 1995-2014 Cap 245, S.26, which defines the powers of the Protector in international trusts as the:

(a) power to appoint and remove trustees
(b) power to change the proper law of the trust
(c) right to receive notice in advance of specified actions of the trustees, and
(d) right to receive information relating to or forming part of the accounts of the trust.

The Act stipulates the separation of duties of the Protector from the Trustees. Trust property can only be held in the name of the Trustee, not the Protector. The appointment of a Protector is optional, except in special purpose trusts whereby a Protector is to be appointed to enforce the purpose. For non-purpose trusts, it is not essential for the validity of a trust to appoint a Protector.

The duties, responsibilities and powers of the Protector must be clearly drafted within the Trust Deed and can be limited or extensive, acting in an advisory capacity to the Trustees or possessing the power to enable them to have significant influence over the structure, such as the capability to amend or modify the Trust, compel the Trustee to act, or have the power of veto.

The types of power conferred onto the Protector will vary according to the wishes of the settlor and the advice given by legal counsel. The Settlor should carefully consider the specific purposes and goals for their Trust and only give the Trust Protector powers that will further those purposes and goals.

Protectors can play a valuable governance role, providing helpful and in-depth, knowledgeable oversight of the family structure, enhancing communication and, where necessary, resolving any disputes arising between all parties to the trust - in effect, making the job of the Trustees easier.

The prior consent of the Protector will generally be required before the Trustee may exercise certain strategic powers under the Trust instrument. However, the Protector’s role should not interfere with the day-to-day running of the Trust, and care should be taken to ensure that the powers conferred are not so broad as to render the Protector a ‘de facto’ Trustee. The Protector is not the Trustee, and every effort should be used to ensure he does not appear to be one. Although the Protector fulfills a supervisory role, he must not be seen to usurp the authority of the Trustees.

The Trust Deed must avoid ambiguity, by stipulating under what circumstances, if any, the Trust Protector will be acting in a fiduciary capacity. The Protector should not act as the “puppet strings” for the Settlor to exercise control over the actions of the Trustees. Such action would usurp the Trustee’s fiduciary responsibilities and the Trust could be declared a “sham”, which could lead to negative tax or estate planning consequences for either the Settlor or the Beneficiaries.

The Protector must remain independent of the Settlor and, ideally, be based in a jurisdiction other than that of the Settlor or the Trustee, so as to ensure autonomy of the Protector.

... in recent years, the appointment of Trust Protectors has become increasingly prevalent

There will be increased costs and increased administration in appointing a Protector, particularly if both the Trustees and the Protectors are professional corporations. Due diligence will be required on the Protector, and if he/she is a US citizen or resident, they will have to adhere to US tax rules, under the Foreign Account Tax Compliance Act. The Organisation for Economic Co-operation and Development’s Common Reporting Standards deem the Protector to be a “controlling person” and will require information on the Protector’s tax situation, requesting they complete a self-certification form.

In conclusion, the use of Trust Protectors can provide an additional level of oversight and flexibility in Trust administration, particularly where trusts of long duration are involved. However, it is important that the powers and duties of Trust Protectors are spelled out in detail in the trust instrument, and Settlors should understand the concept of fiduciary duties and strike a balance between flexibility and accountability when drafting the Trust Deed.
## Withholding Tax Card

A significant part of Barbados’ international business is facilitated through its expansive treaty network, which highlights the country’s commitment to preventing fiscal evasion and avoiding double taxation. The following table details the withholding tax rates applicable to payments of dividends, interest, royalties and management fees from Barbados as at November 30, 2016.

### Withholding Tax Card

<table>
<thead>
<tr>
<th>Country</th>
<th>Dividends %</th>
<th>Interest %</th>
<th>Royalties %</th>
<th>Management Fees %</th>
</tr>
</thead>
<tbody>
<tr>
<td>Non-treaty countries</td>
<td>15/0 (1)</td>
<td>15</td>
<td>15</td>
<td>15</td>
</tr>
<tr>
<td>Barbados</td>
<td>15/5 (2)</td>
<td>0 (3)</td>
<td>0 (3)</td>
<td>-</td>
</tr>
<tr>
<td>Bahrain</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>-</td>
</tr>
<tr>
<td>Botswana*</td>
<td>12/5 (4)</td>
<td>10</td>
<td>10</td>
<td>-</td>
</tr>
<tr>
<td>Canada</td>
<td>15</td>
<td>15 (5)</td>
<td>10 (6)</td>
<td>5</td>
</tr>
<tr>
<td>CARICOM</td>
<td>0</td>
<td>15</td>
<td>15</td>
<td>15</td>
</tr>
<tr>
<td>China P.R.C.</td>
<td>10/5 (7)</td>
<td>10</td>
<td>10</td>
<td>-</td>
</tr>
<tr>
<td>Cuba</td>
<td>15/5 (8)</td>
<td>10</td>
<td>5</td>
<td>-</td>
</tr>
<tr>
<td>Czech Republic</td>
<td>15/5 (6)</td>
<td>5</td>
<td>5/10 (9)</td>
<td>-</td>
</tr>
<tr>
<td>Finland</td>
<td>15/5 (2)</td>
<td>5</td>
<td>5</td>
<td>-</td>
</tr>
<tr>
<td>Ghana*</td>
<td>7.5/5 (10)</td>
<td>7.5/5 (11)</td>
<td>7.5</td>
<td>-</td>
</tr>
<tr>
<td>Italy*</td>
<td>5/15 (2)</td>
<td>5</td>
<td>5</td>
<td>-</td>
</tr>
<tr>
<td>Iceland</td>
<td>15/5 (2)</td>
<td>10</td>
<td>5</td>
<td>-</td>
</tr>
<tr>
<td>Luxembourg</td>
<td>15/5 (12)</td>
<td>0 (3)</td>
<td>0 (3)</td>
<td>-</td>
</tr>
<tr>
<td>Malta</td>
<td>15/5 (13)</td>
<td>5</td>
<td>5</td>
<td>-</td>
</tr>
<tr>
<td>Mauritius</td>
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* Treaty not yet in force; protocol or treaty awaiting ratification

### Notes

1. The rate is 6% if dividends are paid out of income earned from sources outside of Barbados.
2. The rate is 15% for portfolio dividends; 5% if the beneficial owner is a company holding at least 10%.
3. Taxable only in the state in which the beneficial owner is resident.
4. The rate is 12% for portfolio dividends; 5% if the beneficial owner is a company holding at least 25%.
5. The rate applies provided that the interest is subject to tax in the other territory.
6. The rate applies provided that the royalties are subject to tax in the other territory.
7. The rate is 10% for portfolio dividends; 5% if the beneficial owner is a company holding at least 25%.
8. The rate is 5% for portfolio dividends; 5% if the beneficial owner is a company holding at least 25%.
9. The rate is 15% for portfolio dividends; 0% if the beneficial owner is a company holding at least 10%.
10. The rate is 15% generally; 5% if the beneficial owner is a bank.
11. The rate is 7.5% generally; 5% if the beneficial owner is a company holding at least 10%.
12. The rate is 15% for portfolio dividends; 0% if the beneficial owner is a company holding at least 10% for an uninterrupted period of 12 months prior to the decision to distribute the dividend.
13. The rate is 15% for portfolio dividends; 5% if the beneficial owner is a company holding at least 5%.
14. The rate is 10% for portfolio dividends; 5% if the beneficial owner is a company holding at least 10%.
15. The rate is 15% for portfolio dividends; 0% if the beneficial owner is a company subject to certain restrictions holding at least 10%, a regulated bank or insurance company, or a pension fund that is regulated and whose income is generally tax exempt.
16. The rate is 15% of the statutory nominal rate at the time of distribution; 5% if the beneficial owner is a company holding at least 25%.
17. The rate is 5% for portfolio dividends; 0% if the beneficial owner is a company holding at least 10% for an uninterrupted period of at least 12 months prior to the decision to distribute the dividend.
18. The rate is 5% for portfolio dividends; 0% if the beneficial owner is a company holding at least 10%.
19. 0% on any literary, artistic or scientific work including films or television broadcasting, and 5% on any patent, trademark, commercial or scientific equipment among others.
20. The rate is 5% for portfolio dividends; 0% if the beneficial owner is a company holding at least 10%.
21. Agreement extended to Barbados by virtue of the agreement between Switzerland and the UK, on payments to non-residents from Barbados.
22. Dividends are only taxable in the state in which the beneficial owner is resident. The rate of 15% applies to dividends paid out of income from immovable property by an investment vehicle that distributes most of this income annually and whose income is exempt from tax, other than where the beneficial owner is a pension scheme.
23. The rate is 15% for portfolio dividends or dividends paid by a regulated investment company (regardless of the percentage of shares held by the recipient); 5% for holdings of at least 10% or dividends paid by a real estate investment trust (REIT) if the beneficial owner is an individual holding less than 10% of the shares in the REIT (otherwise, a rate of 30% will apply).
24. The rate is 10% for portfolio dividends; 5% if the beneficial owner is a company holding at least 10%.
25. The rate is 15% generally; 5% if the recipient is a bank.
26. International business companies, international societies with restricted liability, exempt insurance companies and qualifying insurance companies are exempt from withholding taxes on payments to non-resident persons or international business entities. Specific legislation applies.

For further information on any of our services, or to join our email list, please contact: Glorita Eduard, (Tax) (246) 626 6753 or Ronaele Dathorne-Bayrd, (Corporate Services) (246) 626 6652

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